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KEN WEBER, CHAIR

CHUCK NOTBOHM

TOM LYTHGOE

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
December 2, 2008**

Present: Commissioners Lythgoe, Notbohm and Weber; Harold Stepper, County Planner; Dave Duffy and Doug Sparrow, City-County Sanitation; Melissa Morris, GIS Coordinator; Joe Carter, Road/Solid Waste Supervisor; Liz Burke, Kelsey Wohlfrom, Katie Dykgreve, and Rae Fitzpatrick, Youth Forestry Monitoring Program; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; Greg Duncan

MINUTES

Commissioner Weber moved to approve the minutes of November 12. Commissioner Lythgoe seconded. The motion carried.

Commissioner Weber moved to approve the minutes of November 18. Commissioner Notbohm seconded. The motion carried.

CALENDAR REVIEW

12/04 Clancy Library subcommittee meeting - 6:00
12/05 Great West open house - 4:00 - 9:00
12/08 Wood for Energy presentation - Helena - 10:00

COMMISSION REPORTS

MTAG

Commissioner Lythgoe reported on the MTAG meeting held Tuesday at 5:00. Tunnels currently has 197 employees; we should be receiving a WARN notice this week, as they will be laying off about 100 employees. Tunnels will continue to pay them through February. The mill will remain open, and they have stockpiled several thousands of cubic yards of raw material and look to stay open until April. Corporate is still looking for financing, and there are people here this week that are looking at both Tunnels and Elkhorn mines as a financial opportunity. They are encouraged that something will happen, but there is nothing confirmed. They are still looking at transferring

the land to the JLDC for the Jefferson City business park. They are fully permitted for expansion of the M pit. He noted that Elkhorn is fully permitted as well.

TUNNELS GRAVEL

Commissioner Lythgoe reported that he talked to Tim Smith regarding the gravel owed to the County. He stated that there is no gravel for the county at this time. If, however, they are successful in going ahead with the M pit expansion, there will be plenty of gravel for the county.

PEITITION FOR ROAD CLOSURE

Commissioner Lythgoe reported that he and Melissa Morris went to Dorothy Hill's property to look at property related to a petition for road closure.

CORRESPONDENCE

PAYMENT AGREEMENT FOR BACK TAXES

The Commissioner was presented with a payment agreement for payment of taxes that was prepared by the County Attorney. Commissioner Lythgoe moved to enter into the agreement, after Matt makes the corrections of a typographical error. Commissioner Weber seconded. Commissioner Notbohm asked if the agreement includes interest and penalties. Commissioner Weber stated that it does. The motion carried.

MADISON-BEAVERHEAD RAC

A memo has been received regarding the Madison-Beaverhead RAC, noting openings on the committee. We need to decide if we are going to form our own RAC or join an existing one. Commissioner Weber stated that he has talked to Dave Shultz, chair of this RAC. He and Beaverhead County Commissioners have spoken, as well as Jack DeGolia with the Forest Service, and it seems that it would be possible for Jefferson County to join this RAC. They would all like to meet to discuss this, possibly this week or next. We need to make a decision, as our initial position was to form our own RAC. He will continue to research this, and come back with a report. Commissioner Lythgoe stated that it is his recommendation that we not try to form our own RAC. Commissioner Notbohm noted that it is much easier to find five people than fifteen.

NEW CHAIRS FOR COURTROOM

Marilyn Craft had previously submitted information to the Commission and the County Attorney regarding replacing the chairs in the courtroom. She had done some research and provided print-outs of possibilities. She also asked about possible funding sources. The Commissioners picked a chair that they like, and will give this information to Marilyn. It is their understanding that she will also check with MCE to see if they can make the selected chair for the same or lesser cost.

ELKHORN MOUNTAIN SERVICES LEASE

The Commission received an e-mail from Bonnie stating that the lease with Elkhorn Mountain Services for office space in Boulder expires in January 2009. Commissioner Weber stated that this should be passed on to the Health Board. Commissioner Lythgoe will handle this.

PROTEST OF TAXES

A copy of a protest of taxes for the RSID and RMD for Big Dipper was received from Patty. The taxpayer, Alan Cormandy, is requesting a tax protest hearing. This is one of the homeowners who protested the formation of the district. Commissioner Lythgoe stated that if he is formally requesting a hearing, the tax appeal board needs to be called. Commissioner Notbohm stated that this should be run past Matt, as he protested after the fact. Commissioner Weber stated that he thinks that the tax appeal board still has to deal with this, but Commissioners Lythgoe and Notbohm stated that they aren't sure about that. This will be passed on to the County Attorney.

IMPACT FEES PILOT PROJECT

The Commission received an e-mail from MACo about a pilot project regarding impact fees. They are soliciting financial support for the project, which would make the implementation of impact fees in counties more attainable. They are requesting that approval of financial support be placed on a future agenda.

TAX PROTEST

A tax protest letter from the owner of lot 6 in the Montana City Ranches Commercial Subdivision was presented. The letter maintains that final improvements to the property have not been completed by the developer, which were required for approval of the subdivision. This will be given to Matt.

SUBDIVISION REVIEW

DISCUSS AND DECIDE ON GRANTING CONDITIONAL USE PERMIT TO CITY-COUNTY SANITATION – BASIC RESOURCE TO INDUSTRIAL

Harold Stepper, County Planner, presented his staff report noting that the request for a conditional use permit is for property owned by City-County Sanitation located east of Highway 518. The property is in an area zoned as basic resource, and zoning regulations do not list industrial uses as a permitted use, conditional use or prohibited use. The applicant has requested that they be allowed to sell 40 to 45 acres of property to Cretex Concrete Products for use as a precast concrete facility. The remaining property that is not permitted for a landfill would be for future development of commercial and industrial uses such as electrical and plumbing contractor facilities, truck and auto repair facilities and welding shops. Cretex Concrete Products is in need of approximately 40 to 45 acres of flat property with a soil structure to support heavy loads which is near a transportation corridor. If the Conditional Use Permit is allowed, the company would move the existing facility that is near Carroll College to this site. Harold recommended that the Commission grant the conditional use permit.

Commissioner Weber asked for clarification of the map, if the squares represent subdivided land.

Harold explained that this section of the map shows property designated as landfill.

Dave Duffy, General Manager of City-County Sanitation, presented color maps to the Commission. He stated that property ownership has been verified by a title search company. The portions outlined in red are for future development. Commissioner Lythgoe asked for further clarification on the map. Dave stated that everything outlined in yellow, red or black is their property.

Dave stated that Cretex will start building 180 and 200-foot concrete beams for bridges, and will slowly move their operation from the City of Helena to this site. This is why they need the acreage that they do, as well as a flat site.

Commissioner Lythgoe moved to grant the conditional use permit. Commissioner Notbohm seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

PUBLIC HEARING – PETITION TO CLARIFY/ABANDON A COUNTY AND/OR PUBLIC ROAD THAT MAY HAVE EXISTED IN SECTION 7 T9N R3W

Commissioner Weber called the public hearing to order and called for the viewer's report.

Melissa Morris, GIS Coordinator, stated that she and Commissioner Lythgoe went and viewed the road the previous morning. They found that the only affected landowner of this clarification of abandonment is Dorothy Hill. The possible roadway to be abandoned does not block access to public property. The public does not access BLM ground through the Hill property, and any public easement that may have existed there in the past no longer exists. It is not an access point to BLM land because the BLM property can be accessed up Holmes Gulch, Tucker Gulch and through a road accessing the original Big Indian Mine that is admitted to be a county road by the landowner. Based on these findings, they recommend that the clarification to the abandonment be granted.

Greg Duncan stated that he filed the original petition, and this petition was filed as a follow-up due to some complaints by a number of individuals that weren't sure where the "x" was on the original map. Because of this, he filed the second petition, got ten free holders to sign off on it for the purpose of clarifying the original petition. He is here on his own behalf, and he feels that this petition will take care of what was initially done in the first petition and remove any questions or doubts. He respectfully requested that the petition be granted.

Hearing no further comments, Commissioner Weber closed the public hearing.

RESOLUTION 44-2008 CLARIFYING THE ABANDONMENT OF A POSSIBLE COUNTY ROAD

Commissioner Weber read the viewer's report (on file in the Clerk and Recorder's office).

Commissioner Lythgoe asked that the public hearing be re-opened. Commissioner Weber re-opened the public hearing and called for comments.

Commissioner Lythgoe stated that he got a call from Bonnie Bompert, who owns half of the approximately 640 acres that is to the northwest of the Hill property. She lives in California, and her brother who lives in New York owns the other half of the property. Bonnie was against this public right-of-way being abandoned. She claims that the road was used for years by her family moving cattle to BLM grounds. He is not sure for what period of time they have not used the road, but she did want her protest acknowledged and recorded.

Commissioner Notbohm asked if anyone else has protested, such as Joe Schmaus. Commissioner Weber stated that we haven't gotten anything. Commissioner Notbohm asked if we are still in litigation with Joe Schmaus. Commissioner Weber stated that we are. Commissioner Weber called for further comments. Hearing none, he again closed the public hearing.

Commissioner Weber read the resolution as follows:

RESOLUTION 44-2008

AN ORDER ABANDONING/CLARIFYING THE ABANDONMENT OF A POSSIBLE COUNTY ROAD

A petition to abandon potential county road/public easement in conjunction with Resolution 6-2008 was filed with the Board of County Commissioners of Jefferson County, Montana (hereinafter, the "Board"), by Dorothy Hill (the affected landowner); John Kinnick; Cathy Brimhall; Daniel Brimhall; Barbara Goll; Bruce Bannon; Mary Bannon; Mike Shossoc; Jan Schossoc; Elizabeth Burns; Rick Abraham; Theresa Abraham; Scott Allen; Gayle Allen; and Greg Duncan. This petition was initially filed with the Clerk and Recorder and certified on November 7, 2008 as a Petition For Abandonment of Potential County Road/Public Easement within Jefferson County, Clarks Gulch/Clarks Creek Road. The description of the subject possible County road/public easement is set forth as follows:

It is a possible road that may lay across any portion of Dorothy Hills property in Section 17, Township 9 North, Range 3 West which may further be described as TRACT BY M&B'S IN LOT 17 CONT 2.56 ACRES of Section 17 of T09NR03W. This abandonment is specifically intended to abandon any public easement upon Hill's property that may or may not exist in furtherance of Resolution 6-2008.

Pursuant to Title 7, Chapter 14, Part 26, MCA, and pursuant to County Policies and Procedures to Establish, Change, Abandon, Or Discontinue a Road in Jefferson County Adopted April 6th, 1983 the Board made a preliminary review of the subject Petition on November 25, 2008. The Petition was certified by the Clerk and Recorder and the Board found that the petition was submitted by the landowner affected by the petition as well as by at least ten freeholders of the road district and found that said petition described the particular portions of the road thereof to be abandoned, the general route thereof, and the lands and owners affected by the proposed abandonment.

The Board further determined that the consent of the owner of the affected lands was endorsed upon the Petition by her execution of the same and that the Petition set forth the necessity or an advantage of the petitioned action. That advantages listed by the Petitioner included that the alleged road is not visible from any place on the ground and further has not been in use by the public since before 1960, the roadway is not necessary as there is an improved gravel road that accesses the residents and properties at the head of Jackson Creek at this present time and Dorothy Hill has her own driveway, the possible roadway to be abandoned does not block access to public property, the Hill property has never been an access point to BLM land, any BLM property can be accessed up Holmes Gulch as well as through a road accessing the original Big Indian Mine that is admitted as a County road by the landowner of the property (Joseph Schmaus) containing the Big Indian Mine, the only affected landowner of this clarification of abandonment is Dorothy Hill, and said abandonment is necessitated by the fact any historic public easement across the Hill's property does not now exist and should be abandoned as was the original intention and determined to be the right course of action in the original petition for abandonment that has already been ordered in Resolution 6-2008 and which all other affected landowners already benefit from.

Therefore, the Board ordered that the feasibility, desirability, and cost of granting the prayer of the Petition, and the merits or demerits of the proposed abandonment be investigated. In this regard, the Board appointed Commissioner Tom Lythgoe a County Commissioner and Melissa Morris, GIS Mapping Tech and designee to accompany Tom Lythgoe as the County does not have a surveyor, to conduct the investigation. On Tuesday, December 2nd, 2008, Commissioner Lythgoe and Melissa Morris reported that they investigated the factual basis for

recommendation of the petition and recommended that the petition be granted.

The Board considered the Petition and the findings of Commissioner Weber's and Joe Carter's investigation. Commissioner _____ moved to approve the closure of said road, hereinafter described:

It is a possible road that may lay across any portion of Dorothy Hills property in Section 17, Township 9 North, Range 3 West which may further be described as TRACT BY M&B'S IN LOT 17 CONT 2.56 ACRES of Section 17 of T09NR03W. This abandonment is specifically intended to abandon any public easement upon Hill's property that may or may not have previously existed historically in furtherance of Resolution 6-2008.

The Board found that the granting of the relief sought in the Petition was in the best interest of the County as the County could not find sufficient evidence to prove said historical roadway was in fact a County road historically and opening said roadway would cost additional money for the Jefferson County Road Department as well as create additional litigation in regards to its affect upon other landowners' rights to private property, was both feasible and desirable for the use and benefit of the public as no costs would be attributed to the County through abandonment and alternative access exists for area landowners, would not cause any increase in costs to the public, and could be done without detriment to the public interest as the public has access to BLM property via the remaining historic Clark Creek loop accessed via Holmes Gulch and Tucker Gulch as well as access to public lands through the Big Indian Mine road which was declared a County road by the area landowner (Joe Schmaus) through and Tucker Gulch. Further, the Commission found that there is access to BLM property via Jefferson County road, Holmes Gulch and from Tucker Gulch a county road originating in Lewis and Clark County. Taking those roads provides access to the Big Indian Mine Road a Jefferson County Road that accesses Joe Schmaus property and BLM property. Holmes Gulch and Tucker Gulch also provide access to the remainder of Clark Creek/Gulch roads not abandoned which also provide access to Schmaus property and BLM property. Further, per Fifth Judicial District Court Stipulated Order dated June 1, 2004 in DV-02-10027, there would also be access from Clark Creek Road from the west across Bompert's land into BLM property via the created easement in settlement of that court case (See attached Judgment).

Upon such basis, the Board determined that the Petition should be granted and that an

appropriate Order should be entered.

Therefore **IT IS HEREBY ORDERED** as follows:

1. That the petition to abandon potential county road/public easement in conjunction with Resolution 6-2008 was filed with the Board of County Commissioners of Jefferson County, Montana (hereinafter, the “Board”), by Dorothy Hill (the affected landowner); John Kinnick; Cathy Brimhall; Daniel Brimhall; Barbara Goll; Bruce Bannon; Mary Bannon; Mike Shossoc; Jan Schossoc; Elizabeth Burns; Rick Abraham; Theresa Abraham; Scott Allen; Gayle Allen; and Greg Duncan is hereby granted.

2. That the portion of the said Jefferson County road which is abandoned by this Order is more particularly described as:

It is a possible road that may lay across any portion of Dorothy Hills property in Section 17, Township 9 North, Range 3 West which may further be described as TRACT BY M&B’S IN LOT 17 CONT 2.56 ACRES of Section 17 of T09NR03W. This abandonment is specifically intended to abandon any public easement upon Hill’s property that may or may not have previously existed historically in furtherance of Resolution 6-2008.

DATED this 2nd day of December, 2008.

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

KEN WEBER, CHAIR

CHUCK NOTBOHM, COMMISSIONER

TOMAS E. LYTHGOE, COMMISSIONER

Commissioner Notbohm stated that he hasn't changed his position on this; he can't understand why they would be closing a road that some people have determined isn't a public road. It is his opinion that it is a county road and has been there since the late 1800s. At one point in time the BLM was asking that we not close it, due to their access. He still feels that we have enough roads being closed and we don't need to close any more. He doesn't feel that the road transecting someone's property is reason enough to close this road.

Commissioner Lythgoe moved to adopt the resolution. Commissioner Weber seconded. The motion carried, with Commissioners Lythgoe and Weber voting aye and Commissioner Notbohm voting nay.

DISCUSS AND DECIDE ON RATIFICATION OF REVISED SOLID WASTE BY-LAWS

Joe Carter, Solid Waste Manager, presented the Commission with the revised Solid Waste by-laws. Commissioner Weber stated that these revisions have been through the Solid Waste Board and approved unanimously.

Commissioner Notbohm asked if there are any major changes from the previous by-laws. Commissioner Weber stated that there aren't many changes; it clarifies a bit easier how membership can change, how many people are on the board. In the past if they wanted to change membership, it had to go through the Solid Waste Board, then the Commission. This is for streamlining processes, basically.

Commissioner Weber stated that the Solid Waste Board has discussed possible changes, but nothing has occurred since it was presented in draft form to the Commission.

Commissioner Lythgoe moved to approve the revised Solid Waste by-laws. Commissioner Weber seconded. The motion carried.

LIZ BURKE – YOUTH FORESTRY MONITORING PROGRAM

Liz Burke thanked the Commission for allowing them to be present at the meeting. The 2008 YFMP Weed Team, consisting of Kelsey Wohlfram, Katie Dykgreve, and Rae Fitzpatrick, gave a presentation of their findings this summer.

Liz stated that this is just one of the teams that went out; they also had a stream team, soil team, and students went into the Meriweather burn and calling in Black-Backed Woodpeckers.

Liz said that they had 16 students this year who gave 3,638 volunteer hours. Thirteen acres were treated for invasive plants, 2 campsites were restored, and 2 were obliterated. Nine soil sites were monitored and surveyed, 18 stream sites were monitored and surveyed and 13 weed sites were monitored and surveyed. Jefferson County is one of eight partners in the program, along

with the Helena National Forest, the Montana Discovery Foundation, Lewis & Clark County, Powell County, UM-Helena College of Technology, Helena School District No. 1, Powell County School District and the Beaverhead-Deer Lodge National Forest.

They were able to get a \$9,000 grant from the National Forest Foundation, using our funding for match. This year they are asking for \$10,000 from Jefferson County, if there are any Title III monies left over. They understand that the new rules for the use of Title III funds do not allow the funds to be used for their program. They are planning to expand their program next year to include a survey of pine beetle infestation. It is a good opportunity to talk about climate change, and Powell County asked that they study sediment load in streams after a fire. She noted that it won't be hard to find places to monitor.

Commissioner Weber called the Clerk and Recorder to ask how much is left in last year's Title III monies and found that we have \$17,638.51. Commissioner Lythgoe moved to grant the YFMP \$10,000 from last year's Title III money, and that we reserve the remainder for the 2010 program. Commissioner Weber seconded. The motion carried.

Commissioner Weber asked that if they do study pine bark beetle infestations, that they monitor an approximate amount of water savings that the trees are not taking in and what impact that might have on waterways.

RESOLUTION 46-2008 RESOLUTION OF INTENT TO FORM MOONLIGHT RIDGE RSID/RID

Commissioner Weber gave an overview of the resolution. He stated that he received a call with a question regarding the general fund. They asked if this would raise the general fund taxes, because the revolving fund is guaranteed by the general fund of the county. He explained to them that it would not raise taxes, even if Jefferson County had to cover the taxes. We cannot do a general fund increase without a vote of the people.

Commissioner Lythgoe stated that he thinks that there is a mistake, in that there are two columns for RMD fees. Commissioner Weber noted that there are two separate set of improvements, as there are two different roads.

Commissioner Lythgoe moved to adopt Resolution 46-2008 Resolution of Intent to Form the Moonlight Ridge RSID/RMD. Commissioner Weber seconded. The motion carried.

Commissioner Lythgoe moved to adjourn. Commissioner Notbohm seconded.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

KEN WEBER, CHAIR

TOMAS E. LYTHGOE, COMMISSIONER

CHUCK NOTBOHM, COMMISSIONER